

**Intellectual Property**  
**Professor Grimmelmann**  
**Cornell Tech / Cornell Law School**  
**Fall 2019**  
**Final Examination**

This examination consists of **two questions** and **five pages**, including this cover page. Your answer has a limit of **3,000 words** (1,500 words per question), which will be strictly enforced. It is due by **2:00 PM on Friday, December 20**. You will have received instructions from the Law School Registrar on how to submit your answer. Please make sure that your answer contains **no identifying information**.

This is an **open-book** examination. You should not need to consult anything beyond the coursepack and your notes, but you can if you wish. You are free to discuss the general legal principles we covered this semester with anyone, including each other. But **you may not discuss the examination questions** with anyone else until after the deadline. Your work on this examination is subject to the Cornell Code of Academic Integrity, the Law School Code of Academic Integrity, and the Campus Code of Conduct.

The questions puts you in a role, but the genre for your answers should be **“law school examination.”** Please make your answer as **specific** to the facts of the question as you can. Generic statements or suggestions, such as “Make sure that all employees follow proper security practices,” will receive few or no points. Use **simple citations** (e.g. “*see Feist*”) where appropriate. I include **spelling, grammar, clarity, and organization** in my grading. I appreciate the use of headings to organize your answer, but they’re not required. If you find a question **ambiguous** or need to **assume additional facts**, state your assumptions and explain how they affect your answer. No reasonable resolution of an ambiguity will be penalized.

Assume for purposes of the examination that present-day law has been fully in effect at all relevant times. Unless otherwise noted, all names are fictitious. Please disregard any resemblance to actual persons, places, or institutions—living, dead, or nonexistent—except where they are specifically incorporated into a question.

## Question 1: Untitled Moose Game

Your client, Rocky Geisel, operates [escape room](#). He owns a company, Escape Hatch, which has a staff of six employees: two creative assistants (Dudley Scott and Nell Foray) who help build the escape rooms and four hosts who welcome guests and help them through the rooms. Geisel has come to your for advice concerning Escape Hatch's recent moose-themed escape room, which is one of four escape room experiences it currently offers.

The idea for a moose escape room came from Geisel's 4-year-old daughter, Natasha, who has a stuffed moose toy and told her father that he should "make an escape room with a moose." Rocky liked the suggestion, and after some thought, came up with the idea of being trapped in a [hunting lodge](#) with an angry moose trying to break down the door from the next room. He designed a series of fifteen puzzles he considers his finest work. One of them involves a photo album of hunters posing with their trophies in the forest; trees in the background of the photos are marked with [blazes](#) that spell out the message COMPUTER PASSWORD IS BULLWINKLE in [Morse Code](#). Another involves a hunter's camouflage jacket. Geisel downloaded a high-resolution image of the famous [ERDL/U.S. Woodland disruptive pattern](#) camouflage used by the U.S. military in various forms from the 1960s to the 2000s, modified it to conceal the outlines of the letters T-H-I-D-W-I-C-K (another password), then had it printed on fabric and sewn into a jacket by Scott.

Geisel decided to call the room Moose Hunter: The Escape Room. On Escape Hatch's website, and for a poster in its lobby. Foray made a design by taking the box cover art for the well-known Moose Hunter 2018 video game, published by Winnabango Games, and replacing "2018" with the words "The Escape Room" and adding, in smaller text at the bottom, "There's a moose in the house! Can you escape in time?" The Moose Hunter series (generally released annually) are first-person simulators in which the player moves carefully and quietly to a good concealed position, waits patiently for a moose to come near, and then carefully aims and shoots. Although traditionally played on PCs with mouse and keyboard, the most recent game in the series, Moose Hunter 2019, can also be played with a VR headset. There is also an unrelated children's card game called

“[There’s a Moose in the House](#),” (rules [here](#)), published by Gamewright, although Geisel had never heard of it when he created Moose Hunter: The Escape Room.

Moose Hunter: The Escape Room has been open to the public for five months. Geisel has recently become aware that a competing escape room site a few miles away, Escape Your Troubles, is offering its own moose-themed escape room, Moose Trouble. Geisel has gone (in disguise) to play Moose Trouble and is outraged. It is also set in a hunting lodge (although without the twist that there is also a moose in the room next door). The actual layout and decorations of the lodge are different in many details, although they both feature rough-hewn wood construction, leather chairs, and lots of antlers. Moose Trouble also features a puzzle with photographs of hunters in the woods; in this one, the blazes spell the message UNDER THE RUG in [Braille](#). It also features a camouflage jacket with the letters T-H-I-D-W-I-C-K hidden in the pattern; Geisel thinks that the jacket may in fact have been printed with an identical pattern to the one in Moose Hunter: The Escape Room but does not know how Escape Your Troubles could have obtained the image file or the jacket to copy it. Four more of the twelve puzzles in Moose Trouble are related in similar ways; the remaining six are different.

*Write a memo to your client of no more than 1500 words explaining Escape Hatch’s IP situation. What IP **risks** does it face, if any, and what should it do about them? What IP **rights** does it have against Escape Your Troubles, if any, and what should it do about them? Is there **anything else** it should do, not do, or do differently for IP reasons?*

## Question 2: Snark Tank

You are on retainer to YOLO Capital, an early-stage venture-capital firm that moves fast and is trying hard to stop breaking things. Your job is to vet pitches for IP problems — issues so fundamental that they make a startup’s business model unworkable. Here is the latest batch of ideas:

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**MillionFootView** will buy satellite images and surveillance camera images of public streets in near real time to track entries and exits from corporate headquarters and major law firms. It will use machine learning techniques to analyze spikes in activity (e.g., numerous associates coming in to work on a weekend) that might indicate preparations for a merger or other major corporate event and sell its predictions to hedge funds. One of the partners interrupts the presentation to ask, “What’s going to stop one of your hedge-fund clients from just doing this in-house, or selling it to other hedge funds?” There is a long and awkward pause, and then everyone looks at you.

**Showtime Shakedown** will perform copyright enforcement for its music-industry clients by sending agents out into major tourist destinations in cities around the United States (e.g. Times Square in New York) looking for street musicians who are playing covers of its clients’ songs and dancers who are putting on shows while its clients’ recordings play. The agents will approach the musicians on the spot, inform them that they are infringing, and ask them to take licenses (at \$100 to \$500 annually). If the musician refuses, the agents will file an infringement lawsuit and return to serve the papers within hours. One of the partners interrupts the presentation to ask, “What’s going to stop existing collecting societies, like ASCAP and BMI, from just adding this to the enforcement services they perform for their members? There is a long and awkward pause, and then everyone looks at you.

**Bats in the Belfry** has developed a prototype of a robotic bat that can fly, navigate even the dark, and hang upside down by its feet. It plans to sell them as children’s toys under the name Robobat. One of the partners interrupts the presentation to ask, “What will you do if one of the big players in the toy space, like Mattel or Lego, decides to make their own?” There is a long and awkward pause, and then everyone looks at you.

**Table for Two** will make an app and a website that will allow users who have restaurant reservations to sell them to each other (taking a small fee, of course). One of the partners interrupts the presentation to ask, “What will you do if one of the big players in the reservation space, like OpenTable or Resy, decides to copy this feature?” There is a long and awkward pause, and then everyone looks at you.

**Candy Canes** has developed a better and more ergonomic version of the standard [quad cane](#). Its improved model has a more ergonomic grip, an angled handle, and a spring-loaded pivot in the base that allows for a little (but not too much) flexibility. Users say that it is astonishingly comfortable and Candy Canes has done experiments that show it reduces the risk of falls. The angled design also gives it a sleek and modern look, unlike the traditional boxy quad cane. One of the partners interrupts the presentation to ask, “What will you do if one of the big players in the medical supplies space decides to make their own?” There is a long and awkward pause, and then everyone looks at you.

**Go Bananas** will deliver anywhere from 1 to 100 perfectly ripe bananas to anywhere within its service area within two hours of ordering. They’ve got the phone number 1-800-BANANAS. It looks like someone else is currently using [gobananas.com](#) for an event planning service under the name Go Bananas, so they’re planning to make their own website at [bananas.app](#). One of the partners interrupts the presentation to ask, “What will you do if one of the big players in the grocery space, like FreshDirect or Amazon, decides to copy this feature?” There is a long and awkward pause, and then everyone looks at you.

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*Write a memo of no more than 1500 words summarizing these startups’ IP situations. For each startup, you have two jobs. First, evaluate any IP risks. Explain why **yes**, it is safe from an IP perspective, **no**, it has unfixable IP risks, **maybe** it could be safe with certain changes (and say what they are), or **you don’t know** because you’re missing essential facts (and say what they are and what the answers would be if you had them). Second, explain whether the startup has a **viable IP strategy**. Describe the **types of IP protection** that are and are not available to it, and explain whether those types of IP protection are sufficient to protect the **proposed business model** against the **identified threat**.*